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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/559,602	01/23/2007	Nils T. Ottestad	TAN-1001US	1534

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EXAMINER

STUART, COLIN W

ART UNIT	PAPER NUMBER
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3771

NOTIFICATION DATE	DELIVERY MODE
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05/25/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket@madanlaw.com
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<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/559,602</p>	<p>Applicant(s) OTTESTAD, NILS T.</p>	
	<p>Examiner COLIN STUART</p>	<p>Art Unit 3771</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 May 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-4.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771

/COLIN STUART/
Examiner, Art Unit 3771

Continuation of 11. does NOT place the application in condition for allowance because: The applicant's amendment to the abstract appear to correct objections to the abstract. The applicant's cited paragraph 8 of the specification as disclosure of a pressure control valve located downstream of the check valve does not appear to support the limitation of the pressure control valve being located downstream of the check valve as claimed. The cited passage in the applicant's remarks discloses a pressure control valve which establishes an overpressure in the breathing system upstream of breathing valve and downstream of the check valve. It is the examiner's position that a pressure control valve located upstream of a check valve does establish an overpressure in the breathing system upstream of the breathing valve and downstream of the check valve as it limits the pressure downstream of the check valve. The applicant's argument that the Botos reference does not disclose a check valve and is not capable of performing the tasks described in the specification and claims, notably the fact that gas or liquid from the surroundings cannot penetrate into the system when breathing gas is supplied from the compressed-air reservoir is not well-taken. Note that the definition of 'check valve' according to Random House College Dictionary is --a valve permitting liquid or gas to flow in one direction--. It is the examiner's position that the valve 11 of the Botos reference does prevent gas or liquid from the surroundings from penetrating into the system when the breathing gas is supplied from the compressed-air reservoir. The claimed check valve contains no structure such that the valve 11 of the Botos reference is incapable of performing the task. Furthermore, despite recitation of the valve 11 of Botos. The applicant's argument that the Botos reference does not disclose an apparatus which uses a filter to provide ambient air to the user is not well-taken as the modified Botos device in view of Hill teaches this reference as explained in the previous office action. The applicant's arguments are not well-taken and as such the final rejection stands.